

**2013**  
**CUMULATIVE SUPPLEMENT**  
**TO**  
**MISSISSIPPI CODE**  
**1972 ANNOTATED**

**Issued September, 2013**

**CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI  
ENACTED THROUGH THE 2013 REGULAR SESSION  
AND 1ST AND 2ND EXTRAORDINARY SESSIONS**

**PUBLISHED BY AUTHORITY OF  
THE LEGISLATURE**

**SUPPLEMENTING**

**Volume 19A**

**(As Revised 2011)**

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**By the Editorial Staff of the Publisher**



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ISBN 978-0-327-09628-3 (Code set)  
ISBN 978-1-4224-9457-8 (Volume 19A)



Matthew Bender & Company, Inc.

701 E. Water Street, Charlottesville, VA 22902-5389

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## **User's Guide**

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.



## **PUBLISHER'S FOREWORD**

### **Statutes**

The 2013 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2013 Regular Session and 1st and 2nd Extraordinary Sessions.

### **Annotations**

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

- Southern Reporter, 3rd Series
- United States Supreme Court Reports
- Supreme Court Reporter
- United States Supreme Court Reports, Lawyers' Edition, 2nd Series
- Federal Reporter, 3rd Series
- Federal Supplement, 2nd Series
- Federal Rules Decisions
- Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

- American Law Reports, 6th Series
- American Law Reports, Federal 2nd
- Mississippi College Law Review
- Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

### **Amendment Notes**

Amendment notes detail how the new legislation affects existing sections.

### **Editor's Notes**

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

### **Joint Legislative Committee Notes**

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

### **Tables**

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2013 Regular Session and 1st and 2nd Extraordinary Sessions.

### **Index**

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

### **Acknowledgements**

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2013

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# **SCHEDULE OF NEW SECTIONS**

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# MISSISSIPPI CODE 1972

ANNOTATED

## VOLUME NINETEEN A

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##### Foreign Companies

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#### GENERAL PROVISIONS

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83-21-25.	Report of surplus lines insurance producer; "gross premiums"; designation of procuring surplus lines insurance producer to make report and payment; exemption from payment of surplus line premium tax on certain property risk [Subsection (2) repealed effective July 1, 2013].

#### § 83-21-3. Requirements for admission.

(1)(a) No foreign insurance company, association, or other insurance entity, either stock, mutual, or reciprocal, shall be admitted to do business or

granted a certificate of authority or license to do business in this state unless and until such company or association shall have done business for a period of at least two (2) years in the state of its domicile, or unless such company seeking admission is the subsidiary or affiliate of a company already licensed in Mississippi.

(b) The Commissioner of Insurance may waive this requirement upon a written request by the applicant and a finding that the applicant meets the following criteria:

(i) The company provides a service that is considered underserved in the state;

(ii) The company has adequate capital and surplus; and

(iii) The company possesses significant management and business experience in its respective line of business.

(2) No foreign stock insurance company shall be admitted or granted a certificate of authority or license to do business in this state unless its paid-up capital stock and its surplus at the time of licensing or renewal of license shall be equal to that required for the organization or incorporation of a like domestic company under the laws of this state.

(3) No foreign mutual or reciprocal insurance company or association shall be admitted or granted a certificate of authority or license to do business in this state unless, at the time of licensing or renewal of license, its surplus shall be equal to that required by the laws of this state for the organization or formation of a like domestic insurance company or association.

(4) No foreign stock, mutual, or reciprocal insurance company or association, incorporated or organized under the laws of any state of the United States, shall be admitted to do business, or granted a certificate of authority, or have license therefor renewed until such company shall have deposited with the State Treasurer of this state securities in an amount not less than Fifty Thousand Dollars (\$50,000.00). Securities deposited in accordance with this section shall be classified as admitted assets for the purpose of determining eligibility of such securities. Provided, however, any company maintaining a deposit with the insurance regulatory authority or any other designated public official of its state of domicile, or of any other state, in trust for the benefit of all its policyholders, or policyholders and creditors, may be exempt from the deposit herein provided upon such company delivering to the Commissioner of Insurance a certificate to such effect, duly authenticated by the appropriate state official holding such deposit. The commissioner may require in addition to the certification of deposit by the public official of its state of domicile an amount not less than Fifty Thousand Dollars (\$50,000.00) be deposited with the State Treasurer of this state. Any deposit made in this state under the provisions of this section shall be for the exclusive use and benefit of policyholders, or policyholders and creditors, in this state; and such deposit shall not bar claim to other assets of the company by policyholders, or policyholders and creditors, in this state in the event of insolvency, receivership, or liquidation of the company.

Notwithstanding any other provision of law, the securities eligible for deposit under the insurance laws of this state relating to deposit of securities

by an insurance company as a condition of commencing or continuing to do an insurance business in this state may be deposited with a clearing corporation or held in the Federal Reserve book-entry system. Securities deposited with a clearing corporation or held in the Federal Reserve book-entry system and used to meet the deposit requirements under the insurance laws of this state shall be under the control of the Commissioner of Insurance and shall not be withdrawn by the insurance company without the approval of Commissioner of Insurance. Any insurance company holding securities in such manner shall provide to the Commissioner of Insurance evidence issued by its custodian or member bank through which such insurance company has deposited such securities in a clearing corporation or through which such securities are held in the Federal Reserve book-entry system, respectively, in order to establish that the securities are actually recorded in an account in the name of the custodian or other direct participant or member bank, and that the records of the custodian, other participant or member bank reflect that such securities are held subject to the order of the Commissioner of Insurance.

(5) In case any insurer which has made a deposit with the Commissioner of Insurance, or other designated official or custodian in this state, of cash or securities in trust for the protection of its policyholders or creditors or both in this state, or of its policyholders or creditors or both in the United States, thereafter becomes merged or consolidated in accordance with the laws of this state if a domestic insurer, or in accordance with the laws of its domiciliary state or nation if a foreign or alien insurer, and upon the effectuation of the merger or consolidation, the resulting corporation is or becomes authorized to do business in this state, the commissioner, or other designated official or custodian, as the case may be, upon the resulting corporation's being so authorized, shall release and transfer the cash or securities so deposited by the merged or consolidated insurer to the resulting corporation, or to such person as it may designate to take and receive the same.

If any insurer which has made such a deposit with the Commissioner of Insurance or other designated official or custodian in the state hereafter withdraws from and ceases to do business in this state, and has paid or provided for the payment of all its obligations and liabilities to its policyholders and creditors in this state by the assumption or reinsurance of the same by an insurer which is or becomes authorized to transact business in this state, the Commissioner of Insurance or other designated official or custodian, as the case may be, shall release and transfer the cash or securities constituting its deposit to such withdrawing insurer, or to such person as it may designate to take and receive the same.

Any release or transfer pursuant hereto shall be made upon application to and the written order of the Commissioner of Insurance. Neither the Commissioner of Insurance, nor other designated official or custodian, as the case may be, shall have any liability for the release or transfer of any such deposit made or authorized in good faith.



**SOURCES:** Codes, 1942, § 5677.5; Laws, 1956, ch. 333, §§ 1-3; Laws, 1958, ch. 442, § 1; Laws, 1962, ch. 462, § 1; Laws, 1991, ch. 420 § 1; Laws, 2001, ch. 412, § 6; Laws, 2013, ch. 459, § 19, eff from and after July 1, 2013.

**Amendment Notes** — The 2013 amendment added (1)(b); and substituted “Commissioner of Insurance” for “Insurance Commissioner” throughout the section.

**§ 83-21-23. Surplus lines insurance producer required to execute and retain form setting forth certain facts; promulgation of rules and regulations and establishment of fees; exemption of certain surplus lines insurance producers from requirement to make due diligence search to determine availability of full amount or type of insurance from admitted insurers under certain circumstances.**

(1) When any policy of insurance or certificate of insurance is procured under the authority of such license, there shall be executed by the surplus lines insurance producer a form setting forth facts in complete detail as to what was done to place such kind of insurance and showing that such surplus lines insurance producer therein was unable, after diligent effort, to procure from a licensed company or companies the full amount of insurance required to protect the property, liability, or risk desired to be insured. This form shall be maintained on file with the surplus lines insurance producer and may be subject to review by the Commissioner of Insurance at any time if the commissioner deems such request advisable.

The Commissioner of Insurance may promulgate rules and regulations and establish appropriate fees for the implementation of Sections 83-21-17 through 83-21-31.

(2)(a) A surplus lines insurance producer is not required to make a due diligence search to determine whether the full amount or type of insurance can be obtained from admitted insurers when the surplus lines insurance producer is seeking to procure or place nonadmitted insurance for an exempt commercial purchaser provided:

(i) The surplus lines insurance producer procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(ii) The exempt commercial purchaser has subsequently requested in writing for the surplus lines insurance producer to procure or place such insurance from a nonadmitted insurer.

(b) The term “exempt commercial purchaser” means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(i) The person employs or retains a qualified risk manager, as defined in Section 527(13) of the Nonadmitted and Reinsurance Reform Act of 2010, to negotiate insurance coverage.

(ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of One Hundred Thousand Dollars (\$100,000.00) in the immediately preceding twelve (12) months.

(iii)1. The person meets at least one (1) of the following criteria:

a. The person possesses a net worth in excess of Twenty Million Dollars (\$20,000,000.00) as such amount is adjusted according to item 2 of this subparagraph (iii).

b. The person generates annual revenues in excess of Fifty Million Dollars (\$50,000,000.00) as such amount is adjusted according to item 2 of this subparagraph (iii).

c. The person employs more than five hundred (500) full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand (1,000) employees in the aggregate.

d. The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least Thirty Million Dollars (\$30,000,000.00) as such amount is adjusted according to item 2 of this subparagraph (iii).

e. The person is a municipality with a population in excess of fifty thousand (50,000) persons.

2. Effective on January 1, 2015, and every five (5) years thereafter, the amounts in items 1a, 1b and 1d of this subparagraph (iii) shall be adjusted to reflect the percentage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics of the United States Department of Labor.

**SOURCES:** Codes, 1906, § 2609; Hemingway's 1917, § 5072; 1930, § 5195; § 1942, § 5705-02; Laws, 1954, ch. 307, § 2; Laws, 1958, ch. 448, § 1; Laws, 1966, ch. 532, § 1; Laws, 1993, ch. 308, § 1; Laws, 1995, ch. 314, § 1; Laws, 2000, ch. 606, § 2; Laws, 2011, ch. 380, § 5; Laws, 2012, ch. 309, § 1, eff from and after July 1, 2012.

**Amendment Notes** — The 2012 amendment in (1), inserted “a form” following “lines insurance producer” in the first sentence, deleted “and further showing that the amount of insurance procured from the eligible nonadmitted insurer or insurers is only the excess over the amount so procurable from licensed companies. Each such affidavit, which shall be effective for the term of the policy, shall be filed with the Commissioner of Insurance along with the report required in Section 83-21-25” and added the last sentence.

**§ 83-21-25. Report of surplus lines insurance producer; “gross premiums”; designation of procuring surplus lines insurance producer to make report and payment; exemption from payment of surplus line premium tax on certain property risk [Subsection (2) repealed effective July 1, 2013].**

(1) The surplus lines insurance producer shall report under oath to the Commissioner of Insurance, within thirty (30) days from the first of January and July of each year, the amount of gross premiums received by him for such insurance in nonadmitted insurers, and shall pay to the Commissioner of Insurance a tax of four percent (4%) thereon. The term “gross premiums” shall mean the total gross amount of premiums received on each and every surplus lines insurance contract, less returned premiums. In default of the payment of any sum which may be due the state under this law, the Commissioner of Insurance may sue for the same. The surplus lines insurance producer shall keep a separate record of all transactions, as herein provided, open at all times to the inspection of the Commissioner of Insurance. The surplus lines insurance producer may designate another surplus lines insurance producer that actually procured the insurance from the nonadmitted insurer to report and pay, on behalf of the surplus lines insurance producer, to the Commissioner of Insurance the tax due the state under this law. The surplus lines insurance producer designated to pay the tax shall be deemed to have the same obligations and responsibilities for reporting and paying the tax due the state on the insurance procured from the nonadmitted insurer as the surplus lines insurance producer who was initially responsible for reporting and paying the tax, and the Commissioner of Insurance may sue such surplus lines insurance producer designated to pay the tax in the event such surplus lines insurance producer is in default of any sum which is due the state for which the designated surplus lines insurance producer is responsible or obligated to pay.

(2) Notwithstanding any provision herein to the contrary, the four percent (4%) tax required in subsection (1) of this section shall not apply to any property risk written by and through the Department of Finance and Administration on behalf of the State of Mississippi. This subsection shall stand repealed from and after July 1, 2013.

**SOURCES:** Codes, 1906, § 2609; Hemingway’s 1917, § 5072; 1930, § 5195; 1942, § 5705-02; Laws, 1954, ch. 307, § 2; Laws, 1958, ch. 448, § 1; Laws, 1966, ch. 532, § 1; Laws, 1993, ch. 308, § 2; Laws, 2011, ch. 380, § 6; Laws, 2012, ch. 350, § 1, eff from and after passage (approved Apr. 16, 2012.)

**Amendment Notes** — The 2012 amendment added (2).



## CHAPTER 23

**Insolvent Insurance Companies; Insurance Guaranty Association**

## ARTICLE 3.

## INSURANCE GUARANTY ASSOCIATION.

**§ 83-23-123. Nonduplication of recovery.****JUDICIAL DECISIONS****2. Exhaustion requirement.**

Under the exhaustion of other insurance provision of Miss. Code Ann. § 83-23-123(1) (1999), the Mississippi Insurance Guaranty Association had to offset or reduce its obligation to pay a covered claim from an insolvent workers' compen-

sation insurer where the injured employee recovered on the same claim in a settlement with an uninsured motorist carrier, which was the full obligation of that insurer. *Miss. Ins. Guar. Ass'n v. Blakeney*, 54 So. 3d 203 (Miss. 2011).

## CHAPTER 29

**Fraternal Societies**

SEC.

83-29-45. Examination of domestic societies.

**§ 83-29-45. Examination of domestic societies.**

The Commissioner of Insurance, or any person or persons he may appoint, shall have the power of visitation and examination into the affairs of any domestic society. They shall have free access to all the books, papers, and documents that relate to the business of the society.

The expenses of such examination shall be paid by the society examined, upon statement furnished by the Commissioner of Insurance, and the examination shall be made as often as the commissioner, in his sole discretion, deems appropriate but, at a minimum, at least once in every five (5) years.

Whenever after examination the Commissioner of Insurance is satisfied that any domestic society has failed to comply with any provisions of this chapter, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business fraudulently, or whenever any domestic society, after the existence of one (1) year or more, shall have a membership of less than four hundred (400) or shall determine to discontinue business, the Commissioner of Insurance may present the facts relating thereto to the Attorney General, who shall, if he deem the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction. Such court shall thereupon notify the officers of such society of a hearing, and if it shall then appear that such society should be closed, said society shall be enjoined from carrying on any further business; and some person shall be appointed receiver of such society and shall proceed at once to take possession of the books,



papers, monies, and other assets of the society and shall forthwith, under the direction of the court, proceed to close the affairs of the society and to distribute its funds to those entitled thereto.

**SOURCES:** Codes, 1930, § 5253; 1942, § 5767; Laws, 2012, ch. 364, § 2, eff from and after July 1, 2012.

**Amendment Notes** — The 2012 amendment rewrote the second paragraph.

## CHAPTER 33

### Reciprocal Insurance

#### SEC.

- 83-33-1. Regulation of exchange.
- 83-33-3. Execution of contracts.
- 83-33-5. Declaration under oath.
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- 83-33-33. Liability of subscribers for reciprocal's debts or obligations.
- 83-33-35. Applicability of licensing requirements and regulations to employees and agents of reciprocal and its attorney.
- 83-33-37. Two or more reciprocals authorized to combine assets and liabilities into one reciprocal.

#### § 83-33-1. Regulation of exchange.

Individuals, partnerships, corporations, limited liability companies, public hospitals, including community hospitals, and all other types of entities authorized to exist under the laws of this state, designated as subscribers, may exchange reciprocal or inter insurance contracts with each other or with individuals and all types of entities authorized to exist under the laws of other states, territories, districts and countries, providing insurance or indemnity among themselves from any loss which may be insured against under other provisions of the law except life insurance.

**SOURCES:** Codes, Hemingway's 1921 Supp. § 5209t; 1930, § 5291; 1942, § 5805; Laws, 1918, ch. 190; Laws, 1995, ch. 313, § 1; Laws, 2013, ch. 459, § 1, eff from and after July 1, 2013.

**Amendment Notes** — The 2013 amendment inserted “limited liability companies ... under the laws”; substituted “individuals and all types ... other states, territories, districts and counties” for “individuals, partnerships and corporations of other states and counties”; inserted “insurance or”; and made related minor stylistic changes.

### § 83-33-3. Execution of contracts.

Such contracts may be executed by an attorney, agent, or other representative, herein designated attorney, duly authorized and acting for said subscribers, and such attorney may be a corporation or limited liability company. The office or offices of such attorney may be maintained at such place or places as may be designated by the subscribers in the power of attorney.

**SOURCES:** Codes, Hemingway’s 1921 Supp. § 5209u; 1930, § 5292; 1942, § 5806; Laws, 1918, ch. 190; Laws, 2013, ch. 459, § 2, eff from and after July 1, 2013.

**Amendment Notes** — The 2013 amendment added “or limited liability company” at the end of the first sentence.

### § 83-33-5. Declaration under oath.

Such subscribers so contracting among themselves shall, through their attorney, file with the Commissioner of Insurance a declaration verified by the oath of such attorney or, where such attorney is a corporation, by the oath of the proper officer thereof, setting forth:

(a) The name of the reciprocal, which name shall not be so similar to any name adopted by any insurance organization authorized to write the same class of insurance in this state as to confuse or deceive.

(b) The address of the reciprocal’s principal office;

(c) The name of the attorney and address of its principal office;

(d) The kind or kinds of insurance to be effected or exchanged.

(e) A copy of the form of policy contract or agreement under or by which such insurance is to be effected or exchanged.

(f) A copy of the form of power of attorney or other authority of such attorney under which such insurance is to be effected or exchanged.

(g) The location of office or offices from which such contracts or agreements are to be issued.

(h) That applications have been made for indemnity upon at least ten (10) separate risks aggregating not less than One Million Five Hundred Thousand Dollars (\$1,500,000.00), as represented by executed contracts or bona fide applications to become concurrently effective; or in case of employers’ liability or similar classes of insurance, covering a total payroll of not less than Two Million Five Hundred Thousand Dollars (\$2,500,000.00).

(i) That there is in the possession of such attorney and available for the payment of losses, assets conforming to Section 83-33-11.

(j) A financial statement in form prescribed for the annual statement.

**SOURCES:** Codes, Hemingway’s 1921 Supp. § 5209v; 1930, § 5293; 1942, § 5807; Laws, 1918, ch. 190; Laws, 2013, ch. 459, § 3, eff from and after July 1, 2013.

**Amendment Notes** — The 2013 amendment substituted “Commissioner of Revenue” for “Insurance Commissioner” in the introductory paragraph; rewrote (a), which formerly read: “The name of the attorney and the name or designation under which such contracts are issued, which name or designation shall not be so similar to any name or designation adopted by any attorney or by an insurance organization in the United States writing the same class of insurance prior to the adoption of such name or designation by the attorney as to confuse or deceive”; added (b) and (c) and redesignated former (b) through (h) as (d) through (j); and substituted “ten (10)” for “seventy-five (75)” in (h).

**§ 83-33-7. Commissioner as agent for service of process; reciprocal may sue or be sued in its own name; prohibition against suing subscribers.**

Any reciprocal doing business in this state may sue or be sued in its name as set forth in its certificate of authority or license. Concurrently with the filing of the declaration provided by the terms of Section 83-33-5, the attorney shall file with the Commissioner of Insurance an instrument in writing, executed by him for said subscribers, conditioned that upon the issuance of certificates of authority provided in Section 83-33-17 action may be brought in the county in which the property or person insured thereunder is located, and service of process may be had upon the Commissioner of Insurance in all suits in this state arising out of such policies, contracts, or agreements, which service shall be valid and binding upon the reciprocal. Three (3) copies of each process shall be served, and the Insurance Department shall file one (1) copy, forward one (1) copy to said attorney, and return one (1) copy with his admission of service. All suits of every kind and description brought against such reciprocal must be brought against the reciprocal as such, and shall not and may not be brought against any of the subscribers thereto individually on account of their connection with or membership in such reciprocal, and must be brought in the manner and method above provided. A judgment rendered in any such case where service of process has been so had upon the Commissioner of Insurance shall be valid and binding against the reciprocal, and such judgment may only be satisfied solely out of the funds of the reciprocal.

**SOURCES:** Codes, Hemingway’s 1921 Supp. § 5209w; 1930, § 5294; 1942, § 5808; Laws, 1918, ch. 190; Laws, 2013, ch. 459, § 4, eff from and after July 1, 2013.

**Amendment Notes** — The 2013 amendment added the first sentence; substituted “Commissioner of Insurance” for “Insurance Commissioner” everywhere it appears; substituted “valid and binding upon the reciprocal” for “valid and binding upon all subscribers exchanging at any time the reciprocal or inter-insurance contracts through such attorney”; substituted “Insurance Department” for “insurance commission”; added the fourth sentence; and substituted “binding against the reciprocal, and such judgment may only be satisfied solely out of the funds of the reciprocal” for “binding against any and all such subscribers as their interests appear, and such judgment may be satisfied out of the funds in the possession of the attorney belonging to such subscribers.”



### § 83-33-11. Assets maintained.

(1) There shall be maintained at all times assets in cash or securities authorized by the laws of this state for the investment of funds of insurance companies doing the same kind of business, an amount equal to one hundred percent (100%) of the unearned premiums or deposits collected and credited to the accounts of subscribers, or fifty percent (50%) of the advance premiums or deposits collected and credited to the accounts of subscribers on policies having one (1) year or less to run, pro rata on those for longer periods. In addition to the foregoing sum in the case of liability insurance, there shall be maintained as a reserve assets sufficient to discharge all liabilities on all outstanding claims, both reported and incurred but not reported, arising under all policies issued, the same to be calculated on the basis of premiums or deposits as in this section defined and in accordance with the laws of the state relating to similar reserves for companies insuring similar risks. Premiums or deposits as used in this section shall be construed to mean the advance payments made by subscribers. If at any time the assets on hand are less than the foregoing requirements or less than One Hundred Thousand Dollars (\$100,000.00), whichever is the greater, where the attorney is exchanging contracts covering employers' liability or similar classes of insurance, the reciprocal shall make up the deficiency. Whenever such assets are less than the amount above required or less than Fifty Thousand Dollars (\$50,000.00), whichever is the greater, if the attorney is exchanging contracts other than those covering employers' liability or similar classes of insurance, the reciprocal shall make up the deficiency.

(2) Notwithstanding subsection (1) of this section, a reciprocal authorized to transact business under this chapter shall comply with the minimum capital, surplus and reserve requirements of a stock company writing similar lines of insurance.

**SOURCES:** Codes, Hemingway's 1921 Supp. § 5209y; 1930, § 5296; 1942, § 5810; Laws, 1918, ch. 190; Laws, 1995, ch. 313, § 2; Laws, 2013, ch. 459, § 5, eff from and after July 1, 2013.

**Amendment Notes** — The 2013 amendment substituted "reciprocal" for "subscriber" in the last two sentences of (1); and rewrote (2), which formerly read: "Reserve requirements are determined in accordance with those of similar companies insuring similar risks."

### § 83-33-13. Financial reports.

Such reciprocal shall, within the time limited for filing the annual report by insurance companies transacting the same kind of business, make a report to the Commissioner of Insurance for each calendar year showing the financial condition of affairs at the office where such contracts are issued, and shall furnish such additional information and reports as may be required to show the total premiums or deposits collected, the total losses paid, the total amounts returned to subscribers, and the amounts retained for expenses,

provided, however, that such reciprocal shall not be required to furnish the names and addresses of any subscribers. The business affairs and assets of such organization shall be subject to examination by the Commissioner of Insurance at the expense of the office examined.

**SOURCES:** Codes, Hemingway's 1921 Supp. § 5209z; 1930, § 5297; 1942, § 5811; Laws, 1918, ch. 190; Laws, 2013, ch. 459, § 6, eff from and after July 1, 2013.

**Amendment Notes** — The 2013 amendment substituted “reciprocal” for “attorney” and substituted “Commissioner of Insurance” for “Insurance Commissioner” everywhere the terms appear.

### § 83-33-15. Penalty.

Any attorney who shall exchange any contracts of insurance of the kind and character specified in this chapter or any attorney or representative of such attorney who shall solicit or negotiate any application for same without the attorney first complying with the foregoing provisions shall be deemed guilty of a misdemeanor and, on conviction thereof, shall be subjected to a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00). For the purpose of organization and upon issuance of permit by the Commissioner of Insurance, powers of attorney may be solicited without license; but no attorney, agent, or other persons shall effect any such contracts of insurance until all the provisions of this chapter shall have been complied with.

**SOURCES:** Codes, Hemingway's 1921 Supp. § 5209a1; 1930, § 5298; 1942, § 5812; Laws, 1918, ch. 190; Laws, 2013, ch. 459, § 7, eff from and after July 1, 2013.

**Amendment Notes** — The 2013 amendment substituted “Commissioner of Insurance” for “Insurance Commissioner” in the last sentence.

### § 83-33-17. Certificate of authority.

Upon compliance with the foregoing requirements and the payment of the fees and taxes provided in this chapter, the Commissioner of Insurance shall issue a certificate of authority to the reciprocal. The Commissioner of Insurance may revoke or suspend any certificate of authority issued hereunder in case of breach of any of the conditions imposed by this chapter after reasonable notice has been given to the reciprocal in writing, so that the reciprocal may appear and show cause why such action should not be taken. Any reciprocal who may have procured a certificate of authority hereunder may have the same renewed annually thereafter, provided that any certificate of authority issued shall continue in force and effect until a new certificate of authority is issued or specifically refused.

**SOURCES:** Codes, Hemingway's 1921 Supp. § 5209b1; 1930, § 5299; 1942, § 5813; Laws, 1918, ch. 190; Laws, 2013, ch. 459, § 8, eff from and after July 1, 2013.

**Amendment Notes** — The 2013 amendment substituted “Commissioner of Insurance” for “insurance commissioner” everywhere it appears; substituted “reciprocal” for references to “he” and “attorney” throughout the section; and made a minor stylistic insertion.

### § 83-33-19. Taxation of premium receipts.

Such reciprocal shall upon the issuance of the certificate of authority herein provided pay to the state the sum of Two Hundred Dollars (\$200.00), as provided in Section 27-15-83, and with the filing of the annual report herein provided shall pay an annual tax upon the gross premiums or deposits collected from subscribers in this state during the preceding calendar year, after deducting therefrom returns for cancellations, considerations for reinsurance, and all amounts returned to subscribers or credited to their account as savings, as provided in Section 27-15-103 et seq.

**SOURCES:** Codes, Hemingway's 1921 Supp. § 5209c1; 1930, § 5300; 1942, § 5814; Laws, 1918, ch. 190; Laws, 1978, ch. 441, § 6; Laws, 2013, ch. 459, § 9, eff from and after July 1, 2013.

**Amendment Notes** — The 2013 amendment deleted “attorney” preceding “reciprocal shall upon the issuance.”

### § 83-33-21. Subscriber's agreement and power of attorney.

(1) Every subscriber of a domestic reciprocal may execute a subscriber's agreement and power of attorney setting forth the rights, privileges and obligations of the subscriber as an underwriter and as a policyholder, and the powers and duties of the attorney and reciprocal.

(2) If a domestic reciprocal requires execution of a subscriber's agreement and power of attorney by a subscriber, then the subscriber, by its execution, shall be bound by the terms and conditions of the subscriber's agreement and power of attorney.

(3) If a domestic reciprocal does not require execution of a subscriber's agreement and power of attorney, the reciprocal shall include on its policies a statement that the subscriber shall be bound by the terms and conditions of the then current subscriber's agreement and power of attorney on file with and as approved by the Commissioner of Insurance, and each subscriber shall by operation of law be bound by such subscriber's agreement and power of attorney as if individually executed by such subscriber. Without additional execution, notice or acceptance, every subscriber of a reciprocal agrees to be bound by any modification of the terms of the subscriber's agreement and power of attorney which is jointly made by the attorney and the board of directors and amendments thereto, which shall be on file with the attorney and Commissioner of Insurance, which shall become effective upon its approval by



the Commissioner of Insurance, and which shall by operation of law bind all subscribers the same as if each subscriber adopted and executed the modified subscriber's agreement and power of attorney. No such modification shall be effective retroactively, nor shall it affect any insurance contract issued prior to the modification. The Commissioner of Insurance's approval shall be deemed given if the subscriber's agreement and power of attorney or any amendment is not disapproved within thirty (30) days of its filing.

**SOURCES:** Laws, 2013, ch. 459, § 10, eff from and after July 1, 2013.

**§ 83-33-23. Board of directors to control and manage reciprocal.**

The board of directors for the reciprocal shall have and exercise the ultimate power over the control and management of the affairs of the reciprocal, subject to the subscriber's agreement. The board of directors shall be selected under rules adopted by the subscribers. At least two-thirds (⅔) of the board of directors of a domestic reciprocal shall be composed of subscribers or representatives of subscribers, other than the attorney or any person employed by or having a financial interest in the attorney. An individual shall not be considered to be employed by or having a financial interest in the attorney if such individual is a subscriber or a representative of a subscriber of the reciprocal. The board of directors may also be referred to as a subscribers advisory committee, board of trustees or by such other name as the board chooses.

**SOURCES:** Laws, 2013, ch. 459, § 11, eff from and after July 1, 2013.

**§ 83-33-25. Return of savings or credits accruing to subscribers.**

A reciprocal may return to its subscribers any savings or credits accruing to their accounts.

**SOURCES:** Laws, 2013, ch. 459, § 12, eff from and after July 1, 2013.

**§ 83-33-27. Certificate to issue nonassessable policies of insurance.**

(1) A domestic reciprocal insurer may apply for a certificate to issue nonassessable policies of insurance. A nonassessable policy is a policy in which a subscriber may not be assessed pursuant to Sections 83-33-29 and 83-33-31. If a domestic reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum capital and surplus required to be maintained by a domestic stock insurer authorized to transact like kinds of insurance, upon application by the domestic reciprocal insurer the Commissioner of Insurance shall issue a certificate of nonassessability authorizing the insurer to omit



provisions imposing contingent assessment liability in all policies delivered or issued or renewed.

(2) If a domestic reciprocal insurer's surplus of assets over all liabilities falls below the minimum capital and surplus required to be maintained by a domestic stock insurer authorized to transact like kinds of insurance, the Commissioner of Insurance may forthwith revoke the certificate of nonassessability. The revocation shall not render subject to contingent assessment liability any policy then in force.

**SOURCES:** Laws, 2013, ch. 459, § 13, eff from and after July 1, 2013.

**Cross References** — Reciprocals prohibited from issuing nonassessable policies unless issued a certificate of nonassessability pursuant to this section, see § 83-33-29.

**§ 83-33-29. Issuing nonassessable policies without obtaining certificate of nonassessability prohibited; contingent assessment liability.**

(1) Any domestic reciprocal insurer that has not been issued a certificate allowing it to issue nonassessable policies as provided in Section 83-33-27 shall issue assessable policies. An assessable policy is a policy in which the insurer charges an initial premium but may later charge an additional premium in accordance with the provisions of this section and Section 83-33-31.

(2) The contingent assessment liability on any one (1) policy in any one (1) calendar year shall equal the premiums earned on the policy for that year multiplied by not less than one (1) nor more than ten (10) as set forth in the policy.

(3) The contingent assessment liability shall not be joint, but shall be individual and several.

(4) Each assessable policy issued by the insurer shall plainly set forth a statement of the contingent assessment liability on the front of the policy in capital letters in not less than ten point type.

**SOURCES:** Laws, 2013, ch. 459, § 14, eff from and after July 1, 2013.

**§ 83-33-31. Computation and timing of assessments levied against subscribers.**

(1) Assessments may be levied against the subscribers of a domestic assessable reciprocal in accordance with Section 83-33-29.

(2) Any assessment levied against the subscribers of a domestic assessable reciprocal shall treat all subscribers equally in that each subscriber's assessment shall be at the same multiple of the subscriber's policies' individual earned premium for the period covered by the assessment. However, no assessment shall exceed the aggregate contingent assessment liability computed in accordance with Section 83-33-29. For the purposes of this section, the premiums earned on the subscriber's policies are the gross premiums charged by the reciprocal for the policies, minus any charges not recurring upon the

renewal or extension of the policies. No subscriber shall have an offset against any assessment for which the subscriber is liable on account of any claim for unearned premium or losses payable.

(3) Every subscriber of a domestic reciprocal having contingent assessment liability shall be liable for and shall pay the subscriber's share of any assessment computed in accordance with this section if, while such policy is in force, or within three (3) years after its termination, the subscriber is notified:

(a) By the reciprocal or the attorney of the reciprocal's intention to levy an assessment; or

(b) That delinquency proceedings have been instituted against the reciprocal under this title and the department or receiver intends to levy an assessment.

**SOURCES:** Laws, 2013, ch. 459, § 15, eff from and after July 1, 2013.

### **§ 83-33-33. Liability of subscribers for reciprocal's debts or obligations.**

No subscriber of a reciprocal shall be personally liable for the payment of the reciprocal's debts or obligations. Any judgment obtained against a reciprocal shall be binding and enforceable only upon and against the reciprocal and shall not be binding or enforceable upon or against any of the reciprocal's subscribers. No legal action shall be allowed to be brought or maintained against the subscribers or insureds of a reciprocal for the payment of the reciprocal's debts or obligations; provided, however, nothing in this section shall diminish or eliminate a subscriber's contingent assessment liability under an assessable policy as provided in Sections 83-33-29 and 83-33-31.

**SOURCES:** Laws, 2013, ch. 459, § 16, eff from and after July 1, 2013.

### **§ 83-33-35. Applicability of licensing requirements and regulations to employees and agents of reciprocal and its attorney.**

The provisions of this code regarding the appointment, licensing, qualification and regulation of insurance agents, brokers and solicitors, do not apply to the reciprocal or its attorney, nor to the salaried representatives of such reciprocal or attorney who receive no commissions, but do apply in the case of any agent, broker or solicitor of any reciprocal who receives any commission.

**SOURCES:** Laws, 2013, ch. 459, § 17, eff from and after July 1, 2013.

### **§ 83-33-37. Two or more reciprocals authorized to combine assets and liabilities into one reciprocal.**

Two (2) or more reciprocals may combine their assets and liabilities into one (1) reciprocal, subject to the approval of the Commissioner of Insurance.

SOURCES: Laws, 2013, ch. 459, § 18, eff from and after July 1, 2013.

## CHAPTER 34

### Windstorm Underwriting Association

SEC.  
83-34-4. Nonadmitted policy fee; responsibility of surplus lines insurance producer placing insurance through nonadmitted insurer to collect and remit fees; calculation of fee; penalty for nonpayment [Repealed effective July 1, 2014].

**§ 83-34-4. Nonadmitted policy fee; responsibility of surplus lines insurance producer placing insurance through nonadmitted insurer to collect and remit fees; calculation of fee; penalty for nonpayment [Repealed effective July 1, 2014].**

(1) Nonadmitted insurers shall not be assessable insurers of the association. All surplus lines insurance producers placing insurance through nonadmitted insurers shall collect from the insured and remit to the association a nonadmitted policy fee on all premiums for all insurance written by such surplus lines insurance producer for a policy from a nonadmitted insurer for any and all risks in this state. By procuring or selling insurance on property in this state from a nonadmitted insurer, each surplus lines insurance producer placing insurance through a nonadmitted insurer agrees to be bound by the provisions of this chapter and to collect and remit the nonadmitted policy fee provided for herein.

(2) The nonadmitted policy fee shall be a percentage of the total policy premium but the nonadmitted policy fee shall not be considered premium and is not subject to premium taxes or commissions. However, failure to pay the nonadmitted policy fee shall be treated the same as failure to pay premium. "Total policy premium" includes taxes and commissions.

(3) The nonadmitted policy fee percentage shall be three percent (3%).

(4) Within twenty (20) days of the end of the quarter, surplus lines insurance producers placing insurance through nonadmitted insurers shall remit directly to the association all nonadmitted policy fees collected in the preceding quarter. In addition to the nonadmitted policy fee provided for herein, surplus lines insurance producers placing insurance through nonadmitted insurers shall collect and remit surcharges as provided by this chapter. Surplus lines insurance producers placing insurance through nonadmitted insurers may designate another surplus lines insurance producer that actually procured the insurance from the nonadmitted carrier to collect and remit the nonadmitted policy fees.

(5) Each insured in this state who directly procures or renews insurance with a nonadmitted insurer on properties, risks or exposures located or to be performed, in whole or in part, in this state, other than insurance procured through a surplus lines licensee, shall be subject to the nonadmitted policy fee



which shall be paid by the insured according to the procedures provided for premium taxes in Section 83-21-17(5).

(6) This section shall stand repealed from and after July 1, 2014.

**SOURCES:** Laws, 2007, ch. 425, § 7; Laws, 2011, ch. 380, § 9; Laws, 2012, ch. 375, § 1, eff from and after July 1, 2012.

**Amendment Notes** — The 2012 amendment deleted “collected after January 1, 2008” following “all premiums” in the second sentence of (1); substituted “three percent (3%)” for “five percent (5%)” at the end of (3); and added (6).

## CHAPTER 39

### Bail Bonds and Bondsmen

SEC.

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| 83-39-3.  | Individual license required.   |
| 83-39-7.  | Qualification bond; return of defendant out on bond; return of qualification bond. |
| 83-39-8.  | Managing and closing business upon death of personal surety.                       |
| 83-39-27. | Prohibited activities.   |

### § 83-39-3. Individual license required.

(1) No person shall act in the capacity of professional bail agent, soliciting bail agent or bail enforcement agent, as defined in Section 83-39-1, or perform any of the functions, duties or powers of the same unless that person shall be qualified and licensed as provided in this chapter. The terms of this chapter shall not apply to any automobile club or association, financial institution, insurance company or other organization or association or their employees who execute bail bonds on violations arising out of the use of a motor vehicle by their members, policyholders or borrowers when bail bond is not the principal benefit of membership, the policy of insurance or of a loan to such member, policyholder or borrower.

(2)(a) No license shall be issued or renewed except in compliance with this chapter, and none shall be issued except to an individual. No firm, partnership, association or corporation, as such, shall be so licensed. No professional bail agent shall operate under more than one (1) trade name. A soliciting bail agent and bail enforcement agent shall operate only under the professional bail agent's name. No license shall be issued to or renewed for any person who has ever been convicted of a felony or any crime involving moral turpitude or who is under twenty-one (21) years of age. No person engaged as a law enforcement or judicial official or attorney shall be licensed hereunder. A person who is employed in any capacity at any jail or corrections facility that houses state, county or municipal inmates who are bailable, whether the person is a public employee, independent contractor, or the employee of an independent contractor, may not be licensed under this section.

(b)(i) No person who is a relative of either a sworn state, county or municipal law enforcement official or judicial official, or an employee,

independent contractor or the contractor's employee of any police department, sheriff's department, jail or corrections facility that houses or holds federal, state, county or municipal inmates who are bailable, shall write a bond in the county where the law enforcement entity or court in which the person's relative serves is located. "Relative" means a spouse, parent, grandparent, child, sister, brother, or a consanguineous aunt, uncle, niece or nephew. Violation of this prohibition shall result in license revocation.

(ii) No person licensed under this chapter shall act as a personal surety agent in the writing of bail during a period he or she is licensed as a limited surety agent, as defined herein.

(iii) No person licensed under this chapter shall give legal advice or a legal opinion in any form.

(3) The department is vested with the authority to enforce this chapter. The department may conduct investigations or request other state, county or local officials to conduct investigations and promulgate such rules and regulations as may be necessary for the enforcement of this chapter. The department may establish monetary fines and collect such fines as necessary for the enforcement of such rules and regulations. All fines collected shall be deposited in the Special Insurance Department Fund for the operation of that agency.

(4) Each license issued hereunder shall expire biennially on the last day of September, unless revoked or suspended prior thereto by the department, or upon notice served upon the commissioner by the insurer that the authority of a limited surety agent to act for or in behalf of such insurer had been terminated, or upon notice served upon the commissioner that the authority of a soliciting bail agent or bail enforcement agent had been terminated by such professional bail agent. A soliciting bail agent or bail enforcement agent may, upon termination by a professional bail agent or upon his cessation of employment with a professional bail agent, be relicensed without having to comply with the provisions of subsection (7)(a) of this section, if he has held a license in his respective license category within ninety (90) days of the new application, meets all other requirements set forth in Section 83-39-5 and subsection (7)(b) of this section, and notifies the previous professional bail agent in writing that he is submitting an application for a new license. Licenses shall expire on the last day of September of each odd-numbered year.

(5) The department shall prepare and deliver to each licensee a license showing the name, address and classification of such licensee, and shall certify that the person is a licensed professional bail agent, being designated as a personal surety agent or a limited surety agent, a soliciting bail agent or a bail enforcement agent. In addition, the license, if for a soliciting bail agent or bail enforcement agent, shall show the name of the professional bail agent and any other information as the commissioner deems proper.

(6) The commissioner, after a hearing under Section 83-39-17, may refuse to issue a privilege license for a soliciting bail agent to change from one (1) professional bail agent to another if he owes any premium or debt to the professional bail agent with whom he is currently licensed. The commissioner, after a hearing under Section 83-39-17, shall refuse to issue a license for a

limited surety agent if he owes any premium or debt to an insurer to which he has been appointed. If a license has been granted to a limited surety agent or a soliciting bail agent who owed any premium or debt to an insurer or professional bail agent, the commissioner, after a hearing under Section 83-39-17, shall revoke the license.

(7)(a) Before the issuance of any initial professional bail agent, soliciting bail agent or bail enforcement agent license, the applicant shall submit proof of successful completion of forty (40) classroom hours of preclicensing education approved by the Professional Bail Agents Association of Mississippi, Inc., and conducted by persons or entities approved by the Professional Bail Agents Association of Mississippi, Inc. All applicants for a soliciting bail agent or bail enforcement agent license applying for such license after July 1, 2013, shall successfully complete a limited examination by the department for the restricted lines of business. The hours required by this subsection shall be classroom hours and may not be acquired through correspondence or over the Internet. Any applicant who has been properly licensed under this chapter within ninety (90) days of submitting an application for a different license type shall not be subject to the preclicensing education requirement.

(b) Beginning on July 1, 2011, in order to assist the department in determining an applicant's suitability for a license under this chapter, the applicant shall submit a set of fingerprints with the submission of an application for license. The department shall forward the fingerprints to the Department of Public Safety for the purpose of conducting a criminal history record check. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check. Fees related to the criminal history record check shall be paid by the applicant to the commissioner and the monies from such fees shall be deposited in the special fund in the State Treasury designated as the "Insurance Department Fund."

(8)(a) Before the renewal of the license of any professional bail agent, soliciting bail agent or bail enforcement agent, the applicant shall submit proof of successful completion of continuing education hours as follows:

(i) There shall be no continuing education required for the first year of an original license;

(ii) Except as provided in subparagraph (i), eight (8) classroom hours of continuing education for each year or part of a year of the two-year license period, for a total of sixteen (16) hours per license period.

(b) If an applicant for renewal failed to obtain the required eight (8) hours for each year of the license period during the actual license year in which the education was required to be obtained, the applicant shall not be eligible for a renewal license but shall be required to obtain an original license and be subject to the education requirements set forth in subsection (7). The commissioner shall not be required to comply with Section 83-39-17 in denying an application for a renewal license under this paragraph (b).



(c) The education hours required under this subsection (8) shall consist of classroom hours approved by the Professional Bail Agents Association of Mississippi, Inc., and provided by persons or entities approved by the Professional Bail Agents Association of Mississippi, Inc. The hours required by this subsection shall be classroom hours and may not be acquired through correspondence or over the Internet.

(d) The continuing education requirements under this subsection (8) shall not be required for renewal of a professional bail agent license for any applicant who is sixty-five (65) years of age and who has been licensed as a professional bail agent for a continuous period of twenty (20) years immediately preceding the submission of the application as evidenced by submission of an affidavit, under oath, on a form prescribed by the department, signed by the licensee attesting to satisfaction of the age, licensing, and experience requirements of this paragraph (d).

(9) No license as a professional bail agent shall be issued unless the applicant has been duly licensed by the department as a soliciting bail agent for a period of three (3) consecutive years immediately preceding the submission of the application. However, this subsection (9) shall not apply to any person who was licensed as a professional bail agent before July 1, 2011.

(10) A nonresident person may be licensed as a professional bail agent, bail soliciting agent or bail enforcement agent if:

(a) The person's home state awards licenses to residents of this state on the same basis; and

(b) The person has satisfied all requirements set forth in this chapter.

**SOURCES:** Codes, 1942, § 8745-02; Laws, 1968, ch. 341, § 2; Laws, 1994, ch. 495, § 2; Laws, 1997, ch. 410, § 19; Laws, 1999, ch. 497, § 1; Laws, 2001, ch. 353, § 1; Laws, 2001, ch. 563, § 1; Laws, 2006, ch. 586, § 1; Laws, 2007, ch. 501, § 3; Laws, 2008, ch. 467, § 1; Laws, 2010, ch. 466, § 2; Laws, 2011, ch. 463, § 4; Laws, 2012, ch. 394, § 1; Laws, 2013, ch. 423, § 1, eff from and after July 1, 2013.

**Amendment Notes** — The 2012 amendment rewrote (4); in (7)(a), inserted “initial” preceding “professional bail agent” in the first sentence; and added the last sentence. The 2013 amendment added the second sentence in (7)(a).

### **§ 83-39-7. Qualification bond; return of defendant out on bond; return of qualification bond.**

(1) Each applicant for a professional bail agent license who acts as personal surety shall be required to post a qualification bond in the amount of Thirty Thousand Dollars (\$30,000.00). The qualification bond shall be made by depositing with the commissioner the aforesaid amount of bonds of the United States, the State of Mississippi or any agency or subdivision thereof, or a certificate of deposit issued by an institution whose deposits are insured by the Federal Deposit Insurance Corporation and made payable jointly to the owner and the Department of Insurance, or shall be written by an insurer as defined in this chapter, shall meet the specifications as may be required and defined in



this chapter, and shall meet such specifications as may be required and approved by the department. The bond shall be conditioned upon the full and prompt payment of any bail bond issued by such professional bail agent into the court ordering the bond forfeited. The bond shall be to the people of the State of Mississippi in favor of any court of this state, whether municipal, justice, county, circuit, Supreme or other court. If any bond issued by a professional bail agent is declared forfeited and judgment entered thereon by a court of proper jurisdiction as authorized in Section 99-5-25, and the amount of the bond is not paid within ninety (90) days, that court shall order the department to declare the qualification bond of the professional bail agent to be forfeited and the license revoked. If the bond was not forfeited correctly under Section 99-5-25, it shall be returned to the court as uncollectible. The department shall then order the surety on the qualification bond to deposit with the court an amount equal to the amount of the bond issued by the professional bail agent and declared forfeited by the court, or the amount of the qualification bond, whichever is the smaller amount. The department shall, after hearing held upon not less than ten (10) days' written notice, suspend the license of the professional bail agent until such time as another qualification bond in the required amount is posted with the department. The revocation of the license of the professional bail agent shall also serve to revoke the license of each soliciting bail agent and bail enforcement agent employed or used by such professional bail agent. In the event of a final judgment of forfeiture of any bail bond written under the provisions of this chapter, the amount of money so forfeited by the final judgment of the proper court, less all accrued court costs and excluding any interest charges or attorney's fees, shall be refunded to the bail agent or his insurance company upon proper showing to the court as to which is entitled to same, provided the defendant in such cases is returned to the sheriff of the county to which the original bail bond was returnable within twelve (12) months of the date of such final judgment, or proof made of incarceration of the defendant in another jurisdiction, and that a "Hold Order" has been placed upon the defendant for return of the defendant to the sheriff upon release from the other jurisdiction, the return to the sheriff to be the responsibility of the professional bail agent as provided in subsection (2) of this section, then the bond forfeiture shall be stayed and remission made upon petition to the court, in the amount found in the court's discretion to be just and proper. A bail agent licensed under this chapter shall have a right to apply for and obtain from the proper court an extension of time delaying a final judgment of forfeiture if such bail agent can satisfactorily establish to the court wherein such forfeiture is pending that the defendant named in the bail bond is lawfully in custody outside of the State of Mississippi.

(2) The qualification bond may be released by the department to the professional bail personal surety agent upon an order to release the qualification bond issued by a court of competent jurisdiction, or upon written request to the department by the professional bail personal surety agent no earlier than five (5) years after the expiration date of his last license.

**SOURCES:** Codes, 1942, § 8745-03; Laws, 1968, ch. 341, § 3; Laws, 1994, ch. 495, § 4; Laws, 1997, ch. 410, § 21; Laws, 1998, ch. 323, § 6; Laws, 1999, ch. 399, § 1; Laws, 2000, ch. 456, § 1; Laws, 2003, ch. 351, § 1; Laws, 2004, ch. 363, § 1; Laws, 2005, ch. 479, § 1; Laws, 2007, ch. 501, § 5; Laws, 2012, ch. 394, § 2, eff from and after July 1, 2012.

**Amendment Notes** — The 2012 amendment rewrote (2).

### **§ 83-39-8. Managing and closing business upon death of personal surety.**

If a professional bail agent who acts as a personal surety agent dies, the personal representative of the estate may contract with licensed professional bail agents, soliciting bail agents or bail enforcement agents to assist him in managing and closing the business affairs of the professional bail agent. The licensed professional bail agent, soliciting bail agent or bail enforcement agent contracted by the personal representative may, on behalf of the personal representative, present defendants in court when required, assist in the apprehension and surrender of defendants to the court, or keep defendants under necessary surveillance. Nothing herein shall give the personal representative the authority to execute and sign bail bonds in connection with judicial proceedings.

**SOURCES:** Laws, 2007, ch. 501, § 1; Laws, 2012, ch. 394, § 3, eff from and after July 1, 2012.

**Amendment Notes** — The 2012 amendment rewrote the section.

### **§ 83-39-27. Prohibited activities.**

It is unlawful for a licensee to engage in any of the following activities:

(a) Specify, suggest or advise the employment of any particular attorney to represent his principal.

(b) Pay a fee or rebate or give or promise to give anything of value to a jailer, policeman, peace officer, clerk, deputy clerk, any other employee of any court, district attorney or any of his employees or any person who has power to arrest or to hold any person in custody.

(c) Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except in defense of any act on a bond, or as counsel to represent such bail agent, his agent or employees.

(d) Pay a fee or rebate or give or promise to give anything of value to the person on whose bond he is surety.

(e) Pay a fee or rebate or give or promise to give anything of value to any person, other than a soliciting bail agent, for the purpose of procuring a bail bond.

(f) Accept anything of value from a person on whose bond he is surety, or from others on behalf of such person, except the fee or premium on the bond, but the bail agent may accept collateral security or other indemnity.

(g) Coerce, suggest, aid and abet, offer promise of favor or threaten any person on whose bond he is surety or offers to become surety, to induce that person to commit any crime.

(h) Give legal advice or a legal opinion in any form.

(i) Refuse to return collateral security or other indemnity when the fee or premium on the bond has been fully paid or when the bail agent's obligation on the bond has been terminated.

**SOURCES:** Codes, 1942, § 8745-09; Laws, 1968, ch. 341, § 9; Laws, 1994, ch. 495, § 13; Laws, 2001, ch. 320, § 1; brought forward without change, Laws, 2010, ch. 466, § 5; Laws, 2011, ch. 463, § 7; Laws, 2012, ch. 394, § 4, eff from and after July 1, 2012.

**Amendment Notes** — The 2012 amendment added (i).

CHAPTER 41

Hospital and Medical Service Associations and Contracts

Article 5.	Provisions Common to Hospital, Medical, or Surgical Insurance .....	83-41-201
Article 7.	Health Maintenance Organization, Preferred Provider Organization and Other Prepaid Health Benefit Plans Protection Act .....	83-41-301

ARTICLE 5.

PROVISIONS COMMON TO HOSPITAL, MEDICAL, OR SURGICAL INSURANCE.

SEC.	
83-41-219.	Reciprocal time limitations on health insurance claim filing and claim audits; applicability [See Editor's Note for effective date and applicability].

**§ 83-41-219. Reciprocal time limitations on health insurance claim filing and claim audits; applicability [See Editor's Note for effective date and applicability].**

(1) If any health insurance issuer or other health insurance benefit payer limits the time in which a health care provider or other person is required to submit a claim for payment, the health insurance issuer or other health insurance benefit payer shall have the same time limit following payment of the claim to perform any review or audit for reconsidering the validity of the claim and requesting reimbursement for payment of an invalid claim or overpayment of a claim.

(2) If any health insurance issuer or other health insurance benefit payer does not limit the time in which a health care provider or other person is required to submit a claim for payment, the health insurance issuer or other health insurance benefit payer may not request reimbursement or offset another claim payment for reimbursement of an invalid claim or overpayment



of a claim more than twelve (12) months after the payment of an invalid or overpaid claim.

(3) Nothing in this section shall apply to:

(a) Audits that were opened before July 1, 2012;

(b) Audits of pharmacies as provided in Section 73-21-175 et seq.;

(c) Claims submitted by providers for reimbursement under the Mississippi Medicaid Program, except that all audits of claims and payments made by or on behalf of the Division of Medicaid are limited to a maximum of five (5) years after final filing of the claim; and

(d) Claims submitted in the context of misrepresentation, omission, concealment, or fraud by the health care provider or other person.

**SOURCES:** Laws, 2010, ch. 393, § 1; Laws, 2012, ch. 532, § 1, eff from and after July 1, 2012.

**Amendment Notes** — The 2012 amendment deleted former (3), which read: “Nothing in this section shall apply to claims submitted in the context of misrepresentation, omission, concealment, or fraud by the health care provider or other person”; and redesignated former (4) as (3), and rewrote the subsection, which read: “Nothing in this section shall apply to an audit of a pharmacy as provided in Section 73-21-175 et seq., nor to claims submitted by providers for reimbursement under the Mississippi Medicaid Program.”

#### ARTICLE 7.

#### HEALTH MAINTENANCE ORGANIZATION, PREFERRED PROVIDER ORGANIZATION AND OTHER PREPAID HEALTH BENEFIT PLANS PROTECTION ACT.

SEC.

83-41-337. Examination of health maintenance organizations and providers; acceptance of reports in lieu of examinations.

#### **§ 83-41-337. Examination of health maintenance organizations and providers; acceptance of reports in lieu of examinations.**

(1) The commissioner shall make an examination of the affairs of any health maintenance organization and providers with whom such organization has contracts, agreements or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this state but not less frequently than once every five (5) years at the expense of the health maintenance organization and provider with whom the health maintenance organization has contracted according to relevant statutes which govern examinations of insurance companies under the insurance laws of this state.

(2) The State Health Officer may make an examination concerning the quality assurance program of the health maintenance organization and of any providers with whom such organization has contracts, agreements or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this state but not less frequently than once every five (5) years.

(3) Every health maintenance organization and provider shall submit its books and records for such examinations and in every way facilitate the completion of the examination. For the purpose of examinations, the commissioner and the State Health Officer may administer oaths to, and examine the officers and agents of, the health maintenance organization and the principals of providers concerning their business as per existing insurance laws, rules and regulations.

(4) The expenses of examinations under this section shall be assessed against the health maintenance organization being examined as per existing laws for examination of insurance companies or the State Health Officer for whom the examination is being conducted.

(5) In lieu of such examination, the commissioner or State Health Officer may accept the report of an examination made by the Commissioner of Insurance or the State Health Officer of another state.

**SOURCES:** Laws, 1995, ch. 613, § 19; Laws, 2012, ch. 364, § 3, eff from and after July 1, 2012.

**Amendment Notes** — The 2012 amendment substituted “five (5)” for “three (3)” preceding “years” throughout the section.

## CHAPTER 49

### Legal Expense Insurance

SEC.

83-49-27. Retention of records; inspection and report; expenses.

#### **§ 83-49-27. Retention of records; inspection and report; expenses.**

(1) The commissioner shall require every sponsor of a prepaid legal services plan to retain at the address shown on its license the plan-related books, records, accounts and vouchers for a term of five (5) years beginning immediately after the completion of the transaction and kept in such manner that the commissioner or his authorized representatives may readily verify its annual statements and determine whether the plan and the sponsor are in compliance with the law.

(2) The commissioner, or his designee, as often as the commissioner, in his sole discretion, deems appropriate but, at a minimum, at least every five (5) years shall visit each sponsor of a prepaid legal services plan and examine into such of its affairs as relate to the business of operating the plan. The commissioner shall have free access to all plan-related books, records, accounts and vouchers of the plan and may summon and examine under oath officers, trustees, agents and employees of the plan and any other persons regarding the affairs and condition of the plan. Provided, that no information, written or oral, need be supplied under this or any other subsection of this chapter in violation of the attorney-client privilege as it is construed by the courts of this state.

(3) Every sponsor of a plan being examined, its officers, employees and agents shall produce and make freely accessible to the commissioner the accounts, records, documents and files in its possession or control relating to the subject of the examination. Such officers, employees and agents shall facilitate such examination and aid the examiners as far as it is in their power in making the examination.

(4)(a) The commissioner shall make a full written report of each examination made by him containing only facts ascertained from the accounts, records and documents examined and from the sworn testimony of witnesses.

(b) The commissioner shall furnish a copy of the proposed report to the sponsor of the plan examined not less than twenty (20) days prior to filing the report. If such plan so requests in writing within such twenty-day period, or such longer period as the commissioner may grant, the commissioner shall grant a hearing with respect to the report, and shall not so file the report until after the hearing and such modifications have been made therein as the commissioner may deem proper.

(c) The commissioner may withhold from public inspection the report of any examination or investigation for so long as he deems it to be in the public interest or necessary to protect the plan examined from unwarranted injury.

(d) After the report has been filed, the commissioner may publish the report or the results thereof in one or more newspapers published in this state if he should deem it to be in the public interest.

(5) The sponsor of the plan so examined shall pay, at the direction of the commissioner, all the actual travel and living expenses of such examination. When the examination is made by an examiner who is not a regular employee of the department, the sponsor examined shall pay the proper charges for the services of the examiner and his assistants in an amount approved by the commissioner. A consolidated account for the examination shall be filed by the examiner with the commissioner. No sponsor or other entity shall pay and no examiner shall accept any additional emolument on account of any examination. When the examination is conducted, in whole or in part, by regular salaried employees of the Department of Insurance, payment for such services and proper expenses shall be made by the sponsor examined to the commissioner, and such payment shall be deposited with the State Treasurer to the account of the Department of Insurance.

**SOURCES:** Laws, 1983, ch. 474, § 14; Laws, 1991, ch. 573, § 123; Laws, 2012, ch. 364, § 4, eff from and after July 1, 2012.

**Amendment Notes** — The 2012 amendment substituted “five (5)” for “three (3)” following “for a term of” in (1); rewrote the first sentence in (2); and substituted “Department of Insurance” for “Insurance Department” twice in (5).



CHAPTER 51

Dental Care Benefits

Prohibitions Against Certain Provisions In Contracts Between Certain Health Care Entities and Dentists .....	83-51-31
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PROHIBITIONS AGAINST CERTAIN PROVISIONS IN CONTRACTS BETWEEN CERTAIN HEALTH CARE ENTITIES AND DENTISTS

SEC.	
83-51-31.	Prohibition against contract between certain health care entities and dentists from requiring that dentist provide services to subscribers at fee established by health care entity unless services are covered services under subscriber agreement.

§ 83-51-31. Prohibition against contract between certain health care entities and dentists from requiring that dentist provide services to subscribers at fee established by health care entity unless services are covered services under subscriber agreement.

No contract between a health care entity that offers a dental plan or plans and a dentist for the provision of services to subscribers may require that a dentist provide services to his subscribers at a fee set by the health care entity unless the services are covered services under the applicable subscriber agreement. For the purposes of this section, “covered services” means services that are reimbursable under the applicable subscriber agreement, notwithstanding any deductibles, waiting periods or frequency limitations that may apply. For the purposes of this section, “dental plan” means any policy of insurance that is issued by a health care entity that provides for coverage of dental services not in connection with a medical plan.

SOURCES: Laws, 2010, ch. 497, § 1; Laws, 2012, ch. 318, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment deleted the (1) designation and former (2) which made the section repealed July 1, 2012.

CHAPTER 58

New Home Warranty Act

SEC.	
83-58-3.	Definitions.
83-58-5.	Builder’s warranties to owner.

§ 83-58-3. Definitions.

For purposes of this chapter the following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:



(a) “Builder” means any person, corporation, partnership, or other entity which constructs a home or engages another to construct a home, including a home occupied initially by its builder as his residence, for the purpose of sale.

(b) “Building standards” means the standards contained in the building code, mechanical-plumbing code, and electrical code in effect in the county, municipality or other local political subdivision where a home is to be located, at the time construction of that home is commenced, or, if the county, city or other local political subdivision has not adopted such codes, the Standard Building Code, together with any additional performance standards, if any, which the builder may undertake to be in compliance.

(c) “Home” means any new structure designed and used only for residential use.

(d) “Initial purchaser” means any person for whom a home is built or the first person to whom a home is sold upon completion of construction.

(e) “Major structural defect” means actual physical damage to any of the following load-bearing portions of a home caused by failure of the load-bearing portions and its load-bearing functions, as follows to wit:

- (i) Foundation systems and footings;
- (ii) Beams;
- (iii) Girders;
- (iv) Lintels;
- (v) Columns;
- (vi) Load-bearing walls and partitions;
- (vii) Floor systems;
- (viii) Roof-framing systems.

(f) “Owner” means the initial purchaser of a home and any of his successors in title to a home during the time the warranties provided under this chapter are in effect.

(g) “Warranty commencement date” means the date that legal title to a home is conveyed to its initial purchaser or the date the home is first occupied, whichever occurs first.

**SOURCES:** Laws, 1997, ch. 465, § 2; Laws, 2012, ch. 405, § 1, eff from and after July 1, 2012.

**Amendment Notes** — The 2012 amendment in (e), deleted “any” preceding “actual physical damage to,” inserted “any of” thereafter, deleted “designated” following “the following,” and inserted “and its” preceding “load-bearing functions”; and inserted “Load-bearing” at the beginning of (e)(vi).

## JUDICIAL DECISIONS

### 2. Limitations period.

Claim by homeowners against a builder under the New Home Warranty Act, Miss. Code Ann. § 83-58-1 et seq., for structural defects in the homeowners’ home, was

time-barred because (1) the claim had to be filed within six years of the home’s first occupation, under Miss. Code Ann. §§ 83-58-5(1)(b), and 83-58-3(g), and (2) the home was first occupied over six years

before suit was filed. *Townes v. Rusty Ellis Builder, Inc.*, 98 So. 3d 1046 (Miss. 2012).

### § 83-58-5. Builder's warranties to owner.

(1) Subject to the exclusions provided in this section, every builder warrants the following to the owner:

(a) One (1) year following the warranty commencement date, the home will be free from any defect due to noncompliance with the building standards.

(b) Six (6) years following the completion date, the home will be free from major structural defects due to noncompliance with the building standards.

(2) Unless the parties otherwise agree in writing, the builder's warranty shall exclude the following items:

(a) Defects in outbuildings including detached garages and detached carports, except outbuildings which contain the plumbing, electrical, heating, cooling or ventilation systems serving the home; swimming pools and other recreational facilities; driveways; walkways; patios; boundary walls; retaining walls; bulkheads; fences; landscaping, including sodding, seeding, shrubs, trees, and planting; off-site improvements including streets, roads, drainage and utilities or any other improvements not a part of the home itself.

(b) Damage to real property which is not part of the home covered by the warranty and which is not included in the purchase price of the home.

(c) Any damage to the extent it is caused or made worse by any of the following:

(i) Negligence, improper maintenance or improper operation by anyone other than the builder or any employee, agent or subcontractor of the builder.

(ii) Failure by anyone other than the builder or any employee, agent or subcontractor of the builder to comply with the warranty requirements of manufacturers of appliances, equipment or fixtures.

(iii) Any change, alteration or addition made to the home by anyone after the initial occupancy by the owner, except any change, alteration or addition performed by the builder, or any employee, agent, or subcontractor of the builder.

(iv) Dampness, condensation or other damage due to the failure of the owner to maintain adequate ventilation or drainage.

(d) Any loss or damage which the owner has not taken timely action to minimize.

(e) Any defect in, or any defect caused by, materials or work supplied by anyone other than the builder, or any employee, agent or subcontractor of the builder.

(f) Normal wear and tear or normal deterioration.

(g) Loss or damage which does not constitute a defect in the construction of the home by the builder, or any employee, agent or subcontractor of the builder.

(h) Loss or damage resulting from war, accident, riot and civil commotion, water escape, falling objects, aircraft, vehicles, acts of God, lightning, windstorm, hail, flood, mud slide, earthquake, volcanic eruption, wind-driven water and changes in the level of the underground water table which are not reasonably foreseeable.

(i) Insect damage and rotting of any kind.

(j) Mold or mold damage, except in cases where the builder's negligence was a proximate or contributing cause of the mold or mold damage.

(k) Any condition which does not result in actual physical damage to the home.

(l) Failure of the builder to complete construction of the home.

(m) Any defect not reported in writing by registered or certified mail to the builder or insurance company, as appropriate, prior to the expiration of the period of coverage of that defect plus thirty (30) days.

(n) Consequential damages.

(o) Any loss or damage to a home caused by soil conditions or soil movement if the home is constructed on land owned by the initial purchaser and the builder obtains a written waiver from the initial purchaser for any loss or damage caused by soil conditions or soil movement.

(p) Any defect in an electrical, plumbing, heating, air conditioning or similar fixture not manufactured by the builder for which the manufacturer provides a warranty regardless of duration.

(3) The provisions of this section establish minimum required warranties and shall not be waived by the owner or reduced by the builder, provided the home is a single-family dwelling to be occupied by an owner as his home.

**SOURCES:** Laws, 1997, ch. 465, § 3; Laws, 2004, ch. 567, § 1; Laws, 2012, ch. 405, § 2, *eff from and after July 1, 2012*.

**Amendment Notes** — The 2012 amendment substituted “completion” for “warranty commencement” preceding “date” in (1)(b).

## JUDICIAL DECISIONS

### 2. Limitations period.

Claim by homeowners against a builder under the New Home Warranty Act, Miss. Code Ann. § 83-58-1 et seq., for structural defects in the homeowners' home, was time-barred because (1) the claim had to be filed within six years of the home's first occupation, under Miss. Code Ann. §§ 83-58-5(1)(b), and 83-58-3(g), and (2) the home was first occupied over six years before suit was filed. *Townes v. Rusty Ellis Builder, Inc.*, 98 So. 3d 1046 (Miss. 2012).

Claim by homeowners against a builder under the New Home Warranty Act (NHWA), Miss. Code Ann. § 83-58-1 et seq., was not subject to Miss. Code Ann. § 15-1-5 because the NHWA limitations period applied over the more general period in Miss. Code Ann. § 15-1-41. *Townes v. Rusty Ellis Builder, Inc.*, 98 So. 3d 1046 (Miss. 2012).



## CHAPTER 64

## Health Discount Plans

SEC.

83-64-1. Health discount plan; disclosures to and rights of consumer; Commissioner of Insurance authorized to adopt rules and regulations to implement provisions; applicability.

**§ 83-64-1. Health discount plan; disclosures to and rights of consumer; Commissioner of Insurance authorized to adopt rules and regulations to implement provisions; applicability.**

(1) "Health discount plan" means a card, program, device, arrangement, contract or mechanism that purports to offer discounts or access to discounts on health care services or supplies that is not insurance or that does not provide coverage for services or benefits regulated under Section 83-9-1 et seq.

(2) A person may not sell, market, promote, advertise or otherwise distribute a health discount plan unless:

(a) Each advertisement, policy, document, information, statement or other communication regarding the health discount plan and the plan itself contain a statement, in bold and prominent type, that the health discount plan is not insurance;

(b) The discounts offered under the health discount plan are specifically authorized by a contract with each provider of the services or supplies listed in conjunction with the plan;

(c) The health discount plan states the name, address and telephone number of the administrator of the plan;

(d) The person makes readily available to the consumer a complete, accurate and up-to-date list of providers participating in the plan that offers discounted health care services or supplies in the consumer's local area and the discounts offered by the providers;

(e) The person provides the consumer the right to cancel the health discount plan within thirty (30) days after purchase of the plan; and

(f) The person provides the consumer with a full refund of all payments made, except for a nominal processing fee, within thirty (30) days after notification of cancellation of the plan under paragraph (e) of this subsection.

(3) The Commissioner of Insurance may adopt regulations to implement this section and to establish additional requirements intended to prohibit unfair or deceptive practices relating to health discount plans.

(4) Rebates and discounts for health discount plans shall not apply to manufacturers of pharmaceuticals or supplies. This section shall not apply to the Division of Medicaid and shall not apply to pharmaceutical manufacturer discount cards.

**SOURCES:** Laws, 2007, ch. 553, § 7; Laws, 2010, ch. 419, § 1; Laws, 2013, ch. 316, § 1, eff from and after July 1, 2013.



**Amendment Notes** — The 2013 amendment deleted former (5), which contained a repealer provision that would have been effective July 1, 2013.

## CHAPTER 73

### Portable Electronics Insurance

#### SEC.

- 83-73-1. Definitions.
- 83-73-3. Licensure of vendors.
- 83-73-5. Requirements for sale of portable electronics insurance.
- 83-73-7. Authority of vendors of portable electronics.
- 83-73-9. Suspension or revocation of license.
- 83-73-11. Termination of portable electronics insurance.
- 83-73-13. Application for license and fees.
- 83-73-15. Rules and regulations.

#### § 83-73-1. Definitions.

For purposes of this chapter, the following terms have the following meanings:

(a) “Business entity” means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.

(b) “Commissioner” means the Commissioner of Insurance for the State of Mississippi.

(c) “Customer” means a person who purchases portable electronics or services.

(d) “Enrolled customer” means a customer who elects coverage under a portable electronics insurance policy issued to a vendor of portable electronics.

(e) “Location” means any physical location in the State of Mississippi or any website, call center site or similar location directed to residents of the State of Mississippi.

(f) “Portable electronics” means electronic devices that are portable in nature, their accessories and services related to the use of the device.

(g)(i) “Portable electronics insurance” means insurance providing coverage for the repair or replacement of portable electronics which may provide coverage for portable electronics against any one or more of the following causes of loss: loss, theft, inoperability due to mechanical failure, malfunction, damage or other similar causes of loss. The insurance shall not exceed Seven Thousand Five Hundred Dollars (\$7,500.00).

(ii) “Portable electronics insurance” does not include:

1. A service contract governed by Section 75-24-91;
2. A policy of insurance covering a seller’s or a manufacturer’s obligations under a warranty; or
3. A homeowner’s, renter’s, private passenger automobile, commercial multiperil or similar policy.

(h) “Portable electronics transaction” means:

(i) The sale or lease of portable electronics by a vendor to a customer;  
or

(ii) The sale of a service related to the use of portable electronics by a vendor to a customer.

(i) “Portable electronics insurance producer” means a business entity required to be licensed under the laws of this state to sell, solicit or negotiate portable electronics insurance.

(j) “Subsidiary corporation” means any corporation in which a majority of the voting stock is owned, directly or indirectly, by another corporation.

(k) “Supervising entity” means a business entity that is a licensed insurer or insurance producer that is authorized by an insurer to supervise the administration of a portable electronics insurance program.

(l) “Vendor” means a business entity in the business of selling, soliciting or negotiating portable electronics transactions directly or indirectly.

**SOURCES:** Laws, 2012, ch. 449, § 1, eff from and after Jan. 1, 2013.

**Cross References** — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

### § 83-73-3. Licensure of vendors.

(1) A vendor is required to hold a portable electronics insurance producer license to sell, solicit or negotiate coverage under a policy of portable electronics insurance.

(2) A portable electronics insurance producer license issued under this chapter shall authorize any employee, subsidiary corporation or authorized representative of the vendor to sell, solicit or negotiate coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in portable electronics transactions.

(3) Notwithstanding any other provision of law, a license issued pursuant to this section shall authorize the licensee and its employees or authorized representatives to engage in those activities that are permitted in this section.

**SOURCES:** Laws, 2012, ch. 449, § 2, eff from and after Jan. 1, 2013.

### § 83-73-5. Requirements for sale of portable electronics insurance.

(1) At every location where portable electronics insurance is sold, solicited or negotiated to customers, brochures or other written materials shall be made available to a prospective customer which:

(a) Disclose that portable electronics insurance may provide a duplication of coverage already provided by a customer’s homeowner’s insurance policy, renter’s insurance policy or other source of coverage;

(b) State that the enrollment by the customer in a portable electronics insurance program is not required in order to purchase or lease portable electronics or services;

(c) Summarize the material terms of the insurance coverage, including:

(i) The identity of the insurer;

(ii) The identity of the supervising entity;

(iii) The amount of any applicable deductible and how it is to be paid;

(iv) Benefits of the coverage; and

(v) Key terms and conditions of coverage such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or nonoriginal manufacturer parts or equipment;

(d) Summarize the process for filing a claim, including a description of how to return portable electronics and the maximum fee applicable in the event the customer fails to comply with any equipment return requirements; and

(e) State that an enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and the person paying the premium shall receive a refund of any applicable unearned premium.

(2) Portable electronics insurance may be offered on a month-to-month or other periodic basis as a group or master commercial inland marine policy issued to a vendor of portable electronics for its enrolled customers.

(3) Eligibility and underwriting standards for customers electing to enroll in coverage shall be established for each portable electronics insurance program.

**SOURCES:** Laws, 2012, ch. 449, § 3, eff from and after Jan. 1, 2013.

### **§ 83-73-7. Authority of vendors of portable electronics.**

(1) The employees, subsidiary corporations and authorized representatives of vendors may sell, solicit or negotiate portable electronics insurance to customers and shall not be subject to licensure as an insurance producer under this chapter provided that:

(a) The employee, subsidiary corporation or authorized representative is only engaged in the sale, solicitation or negotiation of portable electronics insurance;

(b) The vendor obtains a portable electronics insurance producer license to authorize its employees, subsidiary corporations or authorized representatives to sell, solicit or negotiate portable electronics insurance pursuant to this chapter;

(c) The insurer issuing the portable electronics insurance either directly supervises or shall authorize a supervising entity to supervise the administration of the program including development of a training program for employees, subsidiary corporations and authorized representatives of the vendors. The training required by this paragraph (c) shall comply with the following:



(i) The training shall be delivered to employees, subsidiary corporations and authorized representatives of vendors who are directly engaged in the activity of selling, soliciting or negotiating portable electronics insurance;

(ii) The training may be provided in electronic form. However, if conducted in an electronic form, the supervising entity shall implement a supplemental education program regarding the portable electronics insurance product that is conducted and overseen by licensed employees of the supervising entity; and

(iii) Each employee, subsidiary corporation and authorized representative shall receive basic instruction about the portable electronics insurance offered to customers and the disclosures required under Section 83-73-5;

(d) No employee, subsidiary corporation or authorized representative of a vendor of portable electronics shall advertise, represent or otherwise hold himself out as a licensed portable electronics insurance producer.

(2) Notwithstanding any other provision of law, employees, subsidiary corporation or authorized representatives of a vendor of portable electronics shall not be compensated based primarily on the number of customers enrolled for portable electronics insurance coverage, but may receive compensation for activities under the portable electronics insurance producer license which is incidental to their overall compensation.

(3) The charges for portable electronics insurance coverage may be billed and collected by the vendor of portable electronics. Any charge to the enrolled customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics or related services shall be separately itemized on the enrolled customer's bill. If the portable electronics insurance coverage is included with the purchase or lease of portable electronics or related services, the vendor shall clearly and conspicuously disclose to the enrolled customer that the portable electronics insurance coverage is included with the portable electronics or related services. Vendors billing and collecting such charges shall not be required to maintain the funds in a segregated or trust account, provided that the vendor is authorized by the insurer to hold the funds in an alternative manner and remits such amounts to the supervising entity within sixty (60) days of receipt. All funds received by a vendor from an enrolled customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. Vendors may receive compensation for billing and collection services.

**SOURCES:** Laws, 2012, ch. 449, § 4, eff from and after Jan. 1, 2013.

### **§ 83-73-9. Suspension or revocation of license.**

(1) If a vendor of portable electronics or its employee, subsidiary corporation or authorized representative violates any provision of this section, the commissioner may do any of the following:

(a) After notice and hearing, impose fines not to exceed One Thousand Dollars (\$1,000.00) per violation or Thirty Thousand Dollars (\$30,000.00) in the aggregate for such violations and such penalty shall be deposited into the special fund of the State Treasury designated as the "Insurance Department Fund."

(b) After notice and hearing, impose other penalties that the commissioner deems necessary and reasonable to carry out the purpose of this chapter, including, but not limited to:

(i) Suspending the privilege of transacting portable electronics insurance pursuant to this section at specific business locations where violations have occurred;

(ii) Suspending or revoking the ability of individual employees, subsidiary corporations or authorized representatives to act under the license; and

(iii) Placing on probation, suspending or revoking the license of the portable electronics insurance producer.

**SOURCES:** Laws, 2012, ch. 449, § 5, eff from and after Jan. 1, 2013.

### **§ 83-73-11. Termination of portable electronics insurance.**

(1) Notwithstanding any other provision of law, the terms for the termination or modification of a policy of portable electronics insurance shall be as follows:

(a) An insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only upon providing the policyholder and enrolled customers with at least thirty (30) days' notice.

(b) If the insurer changes the terms and conditions, then the insurer shall provide the vendor policyholder with a revised policy or endorsement and each enrolled customer with a revised certificate, endorsement, updated brochure, or other evidence indicating a change in the terms and conditions has occurred and a summary of material changes.

(c) Notwithstanding paragraph (a) of this subsection, an insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon fifteen (15) days' notice for nonpayment of premium, discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim thereunder.

(d) Notwithstanding paragraph (a) of this subsection, an insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance policy:

(i) If the enrolled customer ceases to have an active service with the vendor of portable electronics; or

(ii) If an enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the enrolled customer within thirty (30) calendar days after exhaustion of the limit. However, if notice is not timely sent, enrollment shall continue notwithstanding the aggregate

limit of liability until the insurer sends notice of termination to the enrolled customer.

(e) Where a portable electronics insurance policy is terminated by a policyholder, the policyholder shall mail or deliver written notice to each enrolled customer advising the enrolled customer of the termination of the policy and the effective date of termination. The written notice shall be mailed or delivered to the enrolled customer at least thirty (30) days prior to the termination.

(2) Whenever notice or correspondence with respect to a policy of portable electronics insurance is required pursuant to the policy or is otherwise required by law, it shall be in writing and sent within the notice period, if any, specified within the statute or regulation requiring the notice or correspondence. Notwithstanding any other provision of law, notices and correspondence may be sent either by mail or by electronic means as set forth in this subsection. If the notice or correspondence is mailed, it shall be sent to the vendor of portable electronics at the vendor's mailing address specified for such purpose and to its affected enrolled customers' last-known mailing addresses on file with the insurer. The insurer or vendor of portable electronics, as the case may be, shall maintain proof of mailing in a form authorized or accepted by the United States Postal Service or other commercial mail delivery service. If the notice or correspondence is sent by electronic means, it shall be sent to the vendor of portable electronics at the vendor's electronic mail address specified for such purpose and to its affected enrolled customers' last-known electronic mail address as provided by each enrolled customer to the insurer or vendor of portable electronics, as the case may be. For purposes of this subsection, an enrolled customer's provision of an electronic mail address to the insurer or vendor of portable electronics, as the case may be, shall be deemed consent to receive notices and correspondence by electronic means. The insurer or vendor of portable electronics, as the case may be, shall maintain proof that the notice or correspondence was sent.

(3) Notice or correspondence required by this section or otherwise required by law may be sent on behalf of an insurer or vendor, as the case may be, by the supervising entity authorized by the insurer.

**SOURCES:** Laws, 2012, ch. 449, § 6, eff from and after Jan. 1, 2013.

### **§ 83-73-13. Application for license and fees.**

(1) A sworn application for a license under this chapter shall be filed with the Mississippi Insurance Department on forms prescribed and furnished by the department.

(2) Portable electronics insurance producer licenses issued pursuant to this chapter shall continue from the date of issuance until December 31 in the second year following issuance or renewal of the license, with a minimum term of thirteen (13) months.



(3) Each vendor of portable electronics licensed under this chapter shall pay to the Mississippi Insurance Department a fee of Five Thousand Dollars (\$5,000.00).

**SOURCES:** Laws, 2012, ch. 449, § 7, eff from and after Jan. 1, 2013.

### § 83-73-15. Rules and regulations.

The commissioner may promulgate reasonable rules and regulations to implement this chapter.

**SOURCES:** Laws, 2012, ch. 449, § 8, eff from and after Jan. 1, 2013.

## CHAPTER 75

### Homeowners Insurance Discount for Hurricane or Windstorm Damage Mitigation

- SEC.
- 83-75-1. Discount, rate reduction or adjustment for new home hurricane mitigation construction in certain localities.
  - 83-75-3. Discount, rate reduction or adjustment for existing home hurricane mitigation retrofit in certain localities.
  - 83-75-5. Definitions.
  - 83-75-7. Rules and regulations.

### § 83-75-1. Discount, rate reduction or adjustment for new home hurricane mitigation construction in certain localities.

(1) Not later than July 1, 2013, insurance companies shall provide a premium discount or insurance rate reduction in an amount and manner as established in subsection (4) of this section and according to Section 83-75-5. In addition, insurance companies may also offer additional adjustments in deductible, other credit rate differentials, or a combination thereof, collectively referred to as adjustments. These adjustments shall be available under the terms specified in this section to any owner who builds or locates a new insurable property in Harrison, Hancock, Jackson, Stone and Pearl River Counties, to resist loss due to hurricane or other catastrophic windstorm events.

(2) To obtain the adjustment provided in this section, an insurable property located in this state shall be certified as constructed (a) in accordance with the 2006 or newer version of the International Residential Code, as amended, including the entire coastal construction supplement as recommended by the Mississippi Windstorm Mitigation Coordination Council; or (b) the Fortified for Safer Living or similar programs adopted by the Institute for Business and Home Safety; or (c) any other mitigation program recommended by the Mississippi Windstorm Mitigation Coordination Council and approved by the Commissioner of Insurance. An insurable property shall be certified as

conforming to the applicable building codes only after an evaluation of the insurable property has been satisfactorily completed by a building official or a certified and licensed building evaluator. An insurable property shall be certified as conforming to Fortified for Safer Living criteria only after evaluation and certification by an Institute for Business and Home Safety certified evaluator.

(3) An owner of insurable property claiming an adjustment under this section shall maintain sufficient certification records and construction records including, but not limited to, a Certificate of Occupancy denoting compliance with the applicable building code in subsection (2)(a) of this section or valid certification from the Institute for Business and Home Safety for compliance with the program described in subsection (2)(b) of this section.

(4) Insurers required to submit rates and rating plans to the commissioner shall submit an actuarially justified rating plan for any person who builds an insurable property to comply with the sets of requirements of subsection (2) of this section. An insurer is not required to provide the same amount of adjustment for a building code insurable property as the insurer would to a Fortified for Safer Living insurable property. An adjustment shall only apply to policies that provide wind coverage and may apply to that portion of the premium for wind coverage or to the total premium if the insurer does not separate out its premium for wind coverage in its rate filing. The adjustment shall apply exclusively to the premium designated for the improved insurable property. In addition to the requirements of this section, an insurer may voluntarily offer any other mitigation adjustment that the insurer deems appropriate.

**SOURCES:** Laws, 2012, ch. 443, § 1, eff from and after July 1, 2012.

### **§ 83-75-3. Discount, rate reduction or adjustment for existing home hurricane mitigation retrofit in certain localities.**

(1) Not later than July 1, 2013, insurance companies shall provide a premium discount or insurance rate reduction in an amount and manner as established in subsection (4) of this section and according to Section 83-75-5. In addition, insurance companies may also offer additional adjustments in deductible, other credit rate differentials, or a combination thereof, collectively referred to as adjustments. These adjustments shall be available under the terms specified in this section to any owner who retrofits his or her insurable property in Harrison, Hancock, Jackson, Stone and Pearl River Counties to resist loss due to hurricane or other catastrophic windstorm events.

(2) To obtain the adjustment provided in this section, an insurable property shall be retrofitted to one of the tiered mitigation levels as defined in the Fortified for Safer Homes requirements as may from time to time be adopted by the Institute for Business and Home Safety, or other mitigation program, or other construction technique, or standardized code that is recommended by the Mississippi Windstorm Mitigation Coordination Council and approved by the Commissioner of Insurance. Zone three HUD code manufac-

tured homes installed to specifications and regulations promulgated by the Commissioner of Insurance shall be considered. An insurable property shall be certified as conforming to Fortified for Safer Homes requirements only after evaluation and certification by an Institute for Business and Home Safety certified evaluator. Certification of conformity of an insurable property with the other mitigation program, other construction technique, or other standardized code shall be made only by a building official or other certified or licensed building evaluator.

(3) An owner of insurable property claiming an adjustment under this section shall maintain sufficient certification records and construction records including, but not limited to, a certification of compliance with an approved mitigation program as promulgated by the Mississippi Windstorm Mitigation Coordination Council and approved by the Commissioner of Insurance or valid certification from the Institute for Business and Home Safety for compliance with a program described in subsection (2) of this section.

(4) Insurers required to submit rates and rating plans to the commissioner shall submit actuarially justified rating plans for any person who retrofits an insurable property to comply with the sets of alternatives provided in subsection (2) of this section. The adjustment shall only apply to policies that provide wind coverage and may apply to that portion of the premium for wind coverage or to the total premium if the insurer does not separate out its premium for wind coverage in its rate filing. The adjustment shall apply exclusively to the premium designated for the improved insurable property. In addition to the requirements of this section, an insurer may voluntarily offer any other mitigation adjustment that the insurer deems appropriate.

**SOURCES:** Laws, 2012, ch. 443, § 2, eff from and after July 1, 2012.

### **§ 83-75-5. Definitions.**

For the purposes of this chapter, the term “insurable property” includes single-family residential property. “Insurable property” also includes modular homes satisfying the codes, standards, or techniques as provided in Section 83-75-1 or 83-75-3. Manufactured homes or mobile homes are excluded from “insurable property,” except as expressly provided in Section 83-75-3(2).

**SOURCES:** Laws, 2012, ch. 443, § 3, eff from and after July 1, 2012.

### **§ 83-75-7. Rules and regulations.**

The Commissioner of Insurance shall promulgate such rules and regulations as are necessary to implement and administer this chapter.

**SOURCES:** Laws, 2012, ch. 443, § 4, eff from and after July 1, 2012.





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